

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TERRANCE GAFFNEY,

Plaintiff,

V.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. C19-77-MLP

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR EAJA FEES**

Terrance Gaffney, the prevailing party in this Social Security disability appeal, moves under the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412(d), for an award of attorney’s fees of \$4,870.30 and expenses of \$6.00. (Dkt. # 18.) The Commissioner argues that no fees should be awarded because her position was substantially justified. (Dkt. # 19.) Plaintiff seeks an additional attorney fee award of \$306.38 for 1.5 hours expended in defending his motion. (Dkt. # 20.) As discussed below, the Court rejects the Commissioner’s arguments and GRANTS Plaintiff’s requests for fees and expenses.

The EAJA authorizes payment of attorney's fees to a prevailing party in an action against the United States, unless the court finds that the government's position on the merits in the litigation was "substantially justified." 28 U.S.C. § 2412(d)(1)(A). Substantial justification

1 requires the government to demonstrate its position had a reasonable basis in both law and fact at  
2 each stage of the proceedings, including both the government’s litigation position, and the  
3 underlying agency action giving rise to the civil action. *Tobeler v. Colvin*, 749 F.3d 830, 832–34  
4 (9th Cir. 2014). The “position of the United States” includes *both* the government’s litigation  
5 position and the underlying agency action giving rise to the civil action. *Meier v. Colvin*, 727  
6 F.3d 867, 870 (9th Cir. 2014). Thus, the Court first considers the underlying agency action to  
7 determine whether the government’s position is substantially justified. *Id.* at 872. A court need  
8 not address whether the government’s subsequent litigation position is justified when the  
9 underlying agency position was not substantially justified. *Id.* at 872–73.

10 Here, the Commissioner simply reargues her position, which the Court already rejected in  
11 reversing the ALJ’s decision. (Dkt. # 19 at 4-5.) In light of the Court’s holding that the ALJ’s  
12 RFC was inconsistent with the only job the ALJ identified as a job that Plaintiff could perform,  
13 taxi starter, the Commissioner’s position was not substantially justified. To the extent the  
14 Commissioner raises new arguments, they cannot be relied upon to substantially justify a prior  
15 position. (*Id.*) The Court is not persuaded that this is the decidedly unusual case in which there is  
16 substantial justification under EAJA even though the Commissioner’s decision was reversed for  
17 harmful legal error. *See Meier*, 727 F.3d at 872; *Thangarajav. Gonzales*, 428 F.3d 870, 874 (9th  
18 Cir. 2005).

19 The Commissioner did not object to the amount of fees Plaintiff requested. The Court has  
20 reviewed Plaintiff’s motion, supporting declarations, and the record, and finds the amount  
21 requested is reasonable. The Court therefore GRANTS Plaintiff’s motion for attorney’s fees and  
22 costs (Dkt. # 18), and ORDERS that Plaintiff is awarded attorney’s fees of \$5,176.68 under  
23 EAJA and costs of \$6.00, for a total award of \$5,182.68. Subject to any offset allowed under the

ORDER GRANTING PLAINTIFF’S MOTION  
FOR EAJA FEES - 2

1 Department of Treasury's Offset Program, the check should be made payable to Plaintiff's  
2 attorney, Janet Leanne Martinez, and mailed to Douglas Drachler McKee & Gilbrough, 1904 3rd  
3 Ave, Suite 1030, Seattle, Washington 98101.

4 DATED this 27th day of November, 2019.

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7 MICHELLE L. PETERSON  
8 United States Magistrate Judge  
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